

Last Transmittal No. to:

Presiding Justices 616Other Judges 616Clerk-Magistrates --CPOs/POICs --

MEMORANDUM

TO: All District Court Judges
FROM: Chief Justice Zoll
DATE: October 9, 1996
SUBJECT: Use of Certified Batterers' Treatment Programs in the Disposition of Criminal Cases

The Commissioner of the Department of Public Health has requested that I remind judges of the requirements of the law regarding dispositional orders in criminal cases involving defendants' participation in batterer's treatment programs.

There are two such provisions of law. First, G.L. c. 209A, s. 7, sixth par., provides:

When a defendant has been ordered to participate in a treatment program pursuant to this section, the defendant shall be required to regularly attend a certified or provisionally certified batterer's treatment program.

Second, the session law enacting the above-quoted provision in the General Laws, St. 1990, Ch. 403, s. 16, states (emphasis added):

The department of public health shall thereafter certify and monitor batterer's treatment programs according to the standards established and promulgated by the commission. Programs so certified shall be the only batterer's treatment programs appropriate for court referrals.

Thus, it appears clear that if the court orders a defendant, as part of a disposition in a criminal case involving the violation of an abuse prevention order under G.L. c. 209A, to attend a "batterer's treatment program," that program must be one that has been certified by the DPH. The legislature, in St. 1990, c. 403, mandated DPH to promulgate certification regulations. Those regulations have been issued and there are now 30 programs that have been certified in accordance with them. A list of these programs is attached.

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While there may be some ambiguity about the term "batterer's treatment program," a fair reading of the law would seem to require that if the court intends to order a defendant to attend a program to address the issue of that defendant's battering behavior, that program must be one of those certified by DPH.

The law would not appear to preclude judicial orders in these cases for attendance at alcohol or other substance abuse programs that are not "certified batterer's treatment programs." There is continuing debate about the role of substance abuse as a "cause" or related factor in abusive behavior, but programs aimed at substance abuse generally do not purport to be batterer's treatment programs, and thus the requirement for certification does not apply. In any event, each judge is responsible for fashioning the dispositional terms of each case as he or she sees fit, consistent with the law and all legally available options.

It should be noted that certified batterer's treatment programs are required to provide a minimum of 80 hours of treatment sessions, at a maximum of cost of \$3,500. We are informed by the Commissioner that very few programs charge the maximum fee, and that, typically, fees are imposed on a sliding scale ranging from \$10 to \$60 per session. The 80 hours are divided into 40 to 48 sessions. The Commissioner also indicates that the vast majority of defendants pay a fee of \$25 or less per session, with alternative payment plans for those who are not able to afford the fees.

SEZ:cd